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Supreme Court of the United States.

OCTOBER TERM, 1967.

No. 882.

EDMUND DINIS ET AL.,
Appellants,

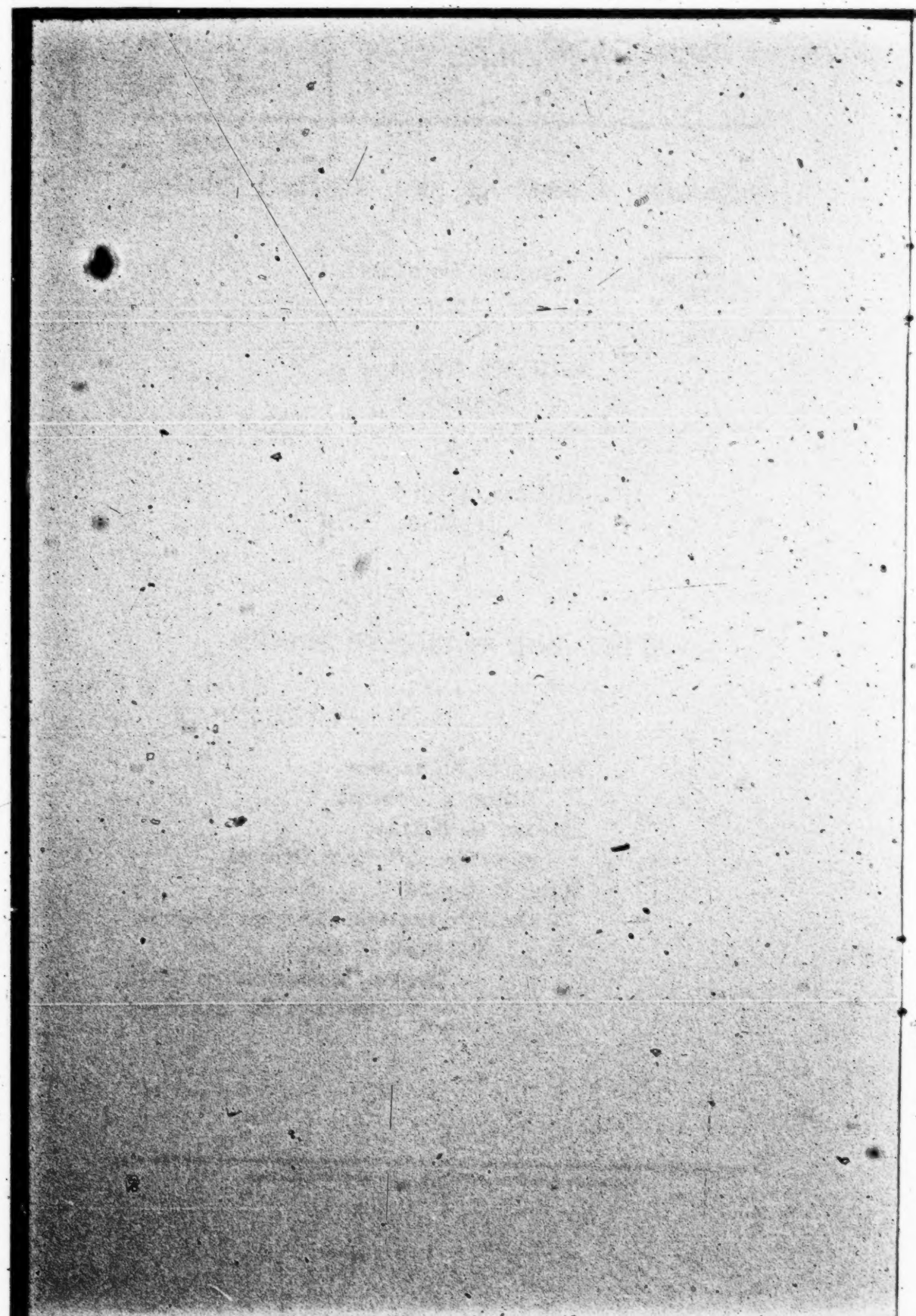
v.

JOHN A. VOLPE ET AL.,
Appellees.

APPELLEES' MOTION TO AFFIRM.

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Supreme Court of the United States.

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EDMUND DINIS ET AL.,
Appellants,
v.
JOHN A. VOLPE ET AL.,
Appellees.

APPELLEES' MOTION TO AFFIRM.

The appellees, in accordance with Rule 16 1 (c), hereby move that the judgment of the United States District Court for the District of Massachusetts be affirmed on the ground that it is manifest that the question on which the decision of this case depends is so unsubstantial that it needs no further argument.

Statement of Case.

This is an appeal from an opinion and final judgment of a duly constituted three-judge United States District Court for the District of Massachusetts declaring that the present Massachusetts Congressional Apportionment (chapter 57, section 1, of the General Laws of the Commonwealth of Massachusetts, as most recently amended by Acts of 1967,

chapter 472, effective July 26, 1967) complies with article I, section 2, of the Constitution of the United States and is valid (Jur. St. 19-22).

Acts of 1967, chapter 472, was enacted subsequent to an interlocutory decree of the District Court which had declared that the Congressional Apportionment of Massachusetts did not conform to the "one person, one vote" principle, and hence did not conform with the command of article I, section 2, of the Constitution of the United States under the rule of *Wesberry* v. *Sanders*, 376 U.S. 1 (1964). (Jur. St. 20.) At that time the District Court withheld injunctive relief prayed for by appellants, and instead the Court retained its jurisdiction pending appropriate action by the Massachusetts Legislature (Jur. St. 18).

Appellants do not appeal from the determination that Acts of 1967, chapter 472, conforms with the "one man, one vote" principle. Their sole ground of appeal is that a malapportioned legislature does not have the power to establish congressional districts in conformity with federal constitutional law.

The District Court did not consider whether the Massachusetts Legislature is or is not malapportioned, since that issue is now pending in other litigation in both the Commonwealth and federal courts (Jur. St. 21). It did, however, reject out of hand appellants' argument. It noted that this Court, "in *Reynolds* v. *Sims*, 377 U.S. 533, 586, commended the district court for affording a malapportioned legislature an opportunity to reapportion itself, see also *Maryland Committee* v. *Tawes*, 377 U.S. 656, 675 . . . ," and that "in *Fortson* v. *Morris*, 385 U.S. 231, the Court held that a legislature was not disqualified by malapportionment from choosing a governor." The District Court then held that "If a malapportioned legislature may not only reapportion itself but also choose a governor we see no

reason whatsoever why it may not establish congressional districts in conformity with federal constitutional requirements." (Jur. St. 21.)

Argument.

Appellants' appeal is misguided in the light of this Court's declaration on several occasions that legislative reapportionment is "primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Reynolds* v. *Sims,* 377 U.S. 533, 586. See also *Maryland Committee* v. *Tawes,* 377 U.S. 656, 675.

Appellants' argument that a malapportioned legislature does not have the power to apportion its congressional districts to conform with federal requirements is to fly in the face of clearly enunciated precedent.

Indeed, this Court summarily rejected the argument in *Fortson* v. *Morris,* 385 U.S. 231, that a legislature, previously determined by the Supreme Court to be malapportioned, could be prevented from discharging its duty to choose a governor. The holding of the District Court is manifestly correct that, if a malapportioned legislature may reapportion itself and choose a governor, there is no reason why it may not establish congressional districts in conformity with federal constitutional requirements. (Jur. St. 21.)

If appellants seek to distinguish between the power of a malapportioned legislature to reapportion itself on the one hand and the power to apportion its congressional districts on the other, it is a distinction without legal substance.

Conclusion.

For the foregoing reasons it is respectfully submitted that the argument of appellants should be rejected out of hand in the same manner it was rejected by the District Court, and that the judgment of the District Court should be affirmed.

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